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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,714	10/03/2000	Arnaud Vilbert	5725.0622	8388

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EXAMINER

MITCHELL, GREGORY W

ART UNIT PAPER NUMBER

1617

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/582,714

Applicant(s)

VILBERT, ARNAUD

Examiner

Gregory W. Mitchell

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to the Remarks and Amendments filed May 17, 2005. Claims 28-30 and 32-114 have been cancelled. Claim 27 is pending and is examined herein. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

35 USC § 103 Rejection Maintained

Claim 27 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bhatt et al. (USPN 6106808) in view of Ramin et al. (USPN 5683681) for the reasons set forth in the Office Action dated November 17, 2004.

Applicant argues, "Bhatt's disclosure at Col. 5, ll. 9-15 where the spray particle size is provided says nothing about the inclusion of the second hair fixative resin, which the Office alleges to correspond with the at least one film-forming polymer of the claimed invention." This argument is not persuasive because Bhatt et al. clearly teaches the use of the Grantrez ® A25 in combination with a polyurethane resin in Table 8 and clearly teaches that the hair spray compositions of the invention disclosed therein have a spray particle size of about 20 to about 150 microns (col. 5, lines 9-15). Accordingly, it is Examiner's position that Bhatt et al. teaches that the compositions disclosed as useful therein have the particle size disclosed. It is further noted that Bhatt et al. specifically teaches that a good spray pattern is achieved when the particles are less than 100 microns (col. 21, lines 41-51).

Applicant's arguments that the particle size is directed to viscosity and not the dispensing device are not persuasive. First, it is noted that the teaching of a pump spray and an aerosol in Bhatt et al. would indicate to one of ordinary skill in the art that some sort of delivery device would be necessary for the administration thereof. It is noted, however, that Bhatt et al. specifically teaches that aerosol compositions are stored and administered from containers/cans (a device) (col. 13, lines 50-67; col. 19, lines 34-41). Use of an aerosol spray can with an actuator button is specifically taught for the administration of aerosol sprays (col. 21, lines 41-51). Second, administration of a spray with a droplet size as instantly claimed would, obviously, have to be administered from a device with an ability to obtain droplets of the size as instantly claimed. As noted above, it is specifically noted by Bhatt et al. that a good spray pattern is achieved when the particles are less than 100 microns (col. 21, lines 41-51).

Applicant argues, "Bhatt does not suggest or teach that the[] beneficial properties are from 'a pump spray aerosol container in a particle size less than or equal to 80 microns.'" This argument is not persuasive because it is Examiner's position that one would have been motivated to utilize a spray as claimed because the composition itself is taught to possess the recited qualities. Accordingly, one would expect the particles of the full range of the particle sizes taught therein to impart the desired hair setting retention characteristics. Furthermore, it is noted, as discussed above, that Bhatt et al. specifically teaches that a particle size of less than 100 microns is desirable.

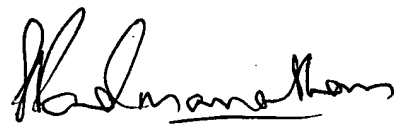
Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W Mitchell whose telephone number is 571-272-2907. The examiner can normally be reached on M-F, 8:30 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gwm



SREENI RADMANABHAN
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